THE NATIONAL WAR LABOR BOARD

THE National War Labor Board originated from the apparent need, during the autumn of 1917, of improving the relations between employers and employees during the period, at least, of the war. The cost of living was steadily rising. Strikes were alarmingly on the increase. The labor supply was constantly shifting. As a result there were frequent acute shortages, and the supply of labor was beginning to be affected by the draft. The coal shortage became more threatening, and transportation was congested. The need for ships was imperative. The call for increased production of war material grew more insistent and the public mind was uneasy over the situation. The appearance of the President at the convention of the American Federation of Labor helped to focus thinking on industrial relations as the heart of the problem of production.

After much consideration the Council of National Defense suggested to the Secretary of Labor that he summon a conference board of employers, labor leaders, and representatives of the public to work out, if possible, the fundamental principles and policies to govern relations between capital and labor during the war. The Secretary of Labor adopted the suggestion, and late in January, 1918, requested one of the leading employers' associations, the National Industrial Conference Board, and the American Federation of Labor to appoint representatives. Two representatives of the public were also appointed. The body so created, known as the War Labor Conference Board, met, worked out a set of principles, and recommended the creation of a National War Labor Board "to adjust disputes in fields of production necessary for the effective conduct of the war."

This recommendation was adopted by the Secretary, and the members of the War Labor Conference Board were nominated by him as members of the National War Labor Board. This action was confirmed by President Wilson by a proclamation dated April 8, 1918, approving the nomination of the members of the board by the Secretary of Labor and providing that the powers and principles worked out by the War Labor Conference Board should be exercised, and be followed by the National War Labor Board.

The proclamation insisted upon the necessity of limiting by these means industrial disturbances with a view to the full production of war necessities.[1]

It thus appears that the board was not created by statute. It was the result of voluntary agreement of leading representatives of the three great parties in interest,—employers (capital), organized labor, and the public,—expressly sanctioned by the executive arm of the national government with all its ordinary and extraordinary war powers. In operation it was regarded as an arm of the government, both by other governmental departments and by the several parties in industry and by the public. It was financed through the Department of Labor. Its funds were not, however, drawn from the regular appropriation granted that department, but from the special fund which Congress granted the President under the following terms: "For the national security and defense, and for each and every purpose connected therewith, to be expended at the discretion of the President."

As thus constituted the board was made up of five representatives of employers, nominated originally by the National Industrial Conference Board; five representatives of organized labor, nominated originally by the president of the American Federation of Labor; and two representatives of the public, one selected by the employer representatives and one by the labor representatives. These representatives of the public were Hon. William H. Taft and Mr. Frank P. Walsh. These two became, by agreement, joint chairmen of the board. Because of this the board was often referred to as the "Taft-Walsh Board." For each member, including the chairmen, there was an alternate named, who acted in the absence of the regular member. The President on May 7, 1918, named ten persons, any one of whom could be selected by the board to act as umpire in any case upon which it could not agree.

The secretary of the board was its chief executive officer. The organization of his staff developed as the work of the board increased. Besides the necessary machinery for recording, procedure, publicity, information, and accounting, it came to include a department of examination and a department of administration of awards.

[1] For further detail as to the developments leading up to the creation of the board see L. C. Marshall, "The War Labor Program and its Administration," 26 J. OF POL. EC. 425.

As finally developed it was the duty of the staff of the department of examination (the members were called examiners) to conduct and preside over all original hearings on complaint of either party to a case, and to analyze the testimony and evidence so obtained for action by the board. The relation of the examiners to the board was analogous to that of a master of chancery under a court of equity. The Interstate Commerce Commission has also employed examiners whose functions are similar to those of the examiners of the National War Labor Board. The members of the staff in the department of administration of awards (called administrators) were assigned, usually one to each case, to go to the place where a controversy had been settled by the board, and oversee the carrying out of the award or findings of the board and interpret the meaning of such award or findings as applied to specific questions as they might arise. For several months there were also a number of "field investigators." It was their duty to go to the parties in each case, investigate the facts and report them to the board. If the board took jurisdiction the investigators helped the parties to prepare their cases for hearing. This was done simply to aid and accelerate the work of the board. One group of these investigators was responsible to the employer members of the board and dealt only with employers in the field. The other group was responsible to the employee side of the board and dealt only with employees. Usually in the field they worked in pairs, one person for each side. Their organization was not clearly defined. They were discontinued about a month after the signing of the armistice, chiefly for financial reasons.

The important functions, powers, and duties of the board, and its principles and policies as specifically sanctioned by the President's proclamation, were as follows:

"To bring about a settlement, by mediation and conciliation, of every controversy arising between employers and workers in the field of production necessary for the effective conduct of the war.

"To do the same thing in similar controversies in other fields of national activity, delays and obstructions in which may, in the opinion of the National Board, affect detrimentally such production. . . .

"To summon the parties to the controversy for hearing and action by the National Board in case of failure to secure settlement by local mediation and conciliation.

"If the sincere and determined effort of the National Board shall fail to bring about a voluntary settlement and the members of the board shall be unable unanimously to agree upon a decision, then and in that case and only as a last resort an umpire appointed in the manner provided in the next paragraph shall hear and finally decide the controversy under simple rules of procedure prescribed by the National Board.

"The members of the National Board shall choose the umpire by unanimous vote. Failing such choice, the name of the umpire shall be drawn by lot from a list of ten suitable and disinterested persons to be nominated for the purpose by the President of the United States. . . .

"The National Board shall refuse to take cognizance of a controversy between employer and workers in any field of industrial or other activity where there is by agreement or Federal law a means of settlement which has not been invoked. . . .

"The action of the National Board may be invoked, in respect to controversies within its jurisdiction, by the Secretary of Labor or by either side in a controversy or its duly authorized representative. The board, after summary consideration, may refuse further hearing if the case is not of such character or importance as to justify it.

"In the appointment of committees of its own members to act for the board in general or local matters, and in the creation of local committees, the employers and the workers shall be equally represented. . . .

"The board in its mediating and conciliatory action, and the umpire in his consideration of a controversy, shall be governed by the following principles:

Principles and Policies to Govern Relations Between Workers and Employers in War Industries for the Duration of the War

There should be no strikes or lockouts during the war

"Right to Organize.

"The right of workers to organize in trade-unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

"The right of employers to organize in associations or groups and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the workers in any manner whatsoever.

"Employers should not discharge workers for membership in trade-unions, nor for legitimate trade-union activities.

"The workers, in the exercise of their right to organize, should not

use coercive measures of any kind to induce persons to join their organizations nor to induce employers to bargain or deal therewith.

"EXISTING CONDITIONS.

"In establishments where the union shop exists the same shall continue, and the union standards as to wages, hours of labor, and other conditions of employment shall be maintained.

"In establishments where union and non-union men and women now work together and the employer meets only with employees or representatives engaged in said establishments, the continuance of such conditions shall not be deemed a grievance. This declaration, however, is not intended in any manner to deny the right or discourage the practice of the formation of labor unions or the joining of the same by the workers in said establishments, as guaranteed in the preceding section, nor to prevent the War Labor Board from urging or any umpire from granting, under the machinery herein provided, improvement of their situation in the matter of wages, hours of labor, or other conditions as shall be found desirable from time to time.

"Established safeguards and regulations for the protection of the health and safety of workers shall not be relaxed.

"WOMEN IN INDUSTRY.

"If it shall become necessary to employ women on work ordinarily performed by men, they must be allowed equal pay for equal work and must not be allotted tasks disproportionate to their strength.

"HOURS OF LABOR.

"The basic eight-hour day is recognized as applying in all cases in which existing law requires it. In all other cases the question of hours of labor shall be settled with due regard to governmental necessities and the welfare, health, and proper comfort of the workers.

"MAXIMUM PRODUCTION.

"The maximum production of all war industries should be maintained and methods of work and operation on the part of employers or workers which operate to delay or limit production, or which have a tendency to artificially increase the cost thereof, should be discouraged.

"MOBILIZATION OF LABOR.

"For the purpose of mobilizing the labor supply with a view to its rapid and effective distribution, a permanent list of the numbers of skilled and other workers available in different parts of the country shall be kept on file by the Department of Labor, the information to be constantly furnished —

1. By the trade-unions.

2. By State employment bureaus and Federal agencies of like character.

3. By the managers and operators of industrial establishments throughout the country.

"These agencies shall be given opportunity to aid in the distribution of labor as necessity demands.

"CUSTOM OF LOCALITIES.

"In fixing wages, hours, and conditions of labor, regard should always be had to the labor standards, wage scales, and other conditions prevailing in the localities affected.

"THE LIVING WAGE.

1. The right of all workers, including common laborers, to a living wage is hereby declared.

2. In fixing wages, minimum rates of pay shall be established which will insure the subsistence of the worker and his family in health and reasonable comfort."

A resolution adopted by the board July 31, 1918, was regarded by all parties as having substantially the same force as its original statement of principles. The resolution stated in effect that during the period of the war the employer should not expect unusual profits nor the employee abnormal wages; that each should get enough to enable him to contribute most effectively to the prosecution of the war. The resolution concluded:

"That the board should be careful in its conclusions not to make orders in this interregnum, based on approved views of progress in normal times, which, under war conditions, might seriously impair the present economic structure of our country;

"That the declaration of our principles as to the living wage and an established minimum should be construed in the light of these considerations:

"That for the present the board or its sections should consider and decide each case involving these principles on its particular facts and reserve any definite rule of decision until its judgments have been sufficiently numerous and their operation sufficiently clear to make generalization safe."

The board was clearly intended to act by means of mediation and conciliation. It is interesting to note, however, that the pressure of circumstances was such that almost from the start the board acted in a number of cases as a court of arbitration. Out of the twelve hundred and forty-five separate controversies placed

before the board from the beginning to May 31, 1919, the parties made one hundred and ninety-three joint submissions for arbitration. The remainder, ten hundred and fifty-two, were *ex parte* cases. But even in these *ex parte* cases the board itself did very little mediation or conciliation. The testimony and evidence were received and a decision rendered. The urgencies of war production were such that up to the time of the armistice but few parties refused to carry out the decisions of the board, even in those where only one party to the dispute had invoked the board's aid. Compulsory arbitration was not intended or at any time practiced. For the first few weeks the board itself attempted conciliation, but the pressure of work and perhaps the structure of the board soon made that impossible. Some conciliation was effected by field investigators and examiners, and in a number of cases the work of the administrators, subsequent to a decision by the board, was very largely conciliatory in character.

The board was the court of last resort in all labor disputes for the entire country. Other government departments had created adjustment boards within their own fields, but where these failed to settle disputes reference was sometimes made to the National War Labor Board. The Bridgeport case, the Worthington Pump case, and the New York Harbor dispute, referred to later on, were instances of this sort. A large number of cases were referred to the board by the Department of Labor.

The terms of its creation did not give the board any power for enforcing its decisions. Nevertheless, in practice it was only necessary to invoke the aid of the President, or that of the other departments or war controls of government, to secure the most drastic powers. In the Smith and Wesson case the refusal of the employer to abide by the board's finding ended by a prompt commandeering of the plant by the government. Similarly, when the Bridgeport strikers refused to obey the board the President ordered them back to work under pain of deprivation of employment through the Federal Employment Bureau. They obeyed. Great weight also attached to the board's decrees because of the power of the American Federation of Labor and the National Industrial Conference Board by whom and from whom its members were originally chosen. Awards in cases where there had been joint submission of the parties were enforceable at law, by virtue of the common-law

doctrine of awards, but this fact did not enter into the situation during the war. The national necessity was the compelling force behind every award or finding.

Cases came to the board in various ways. Usually aggrieved employees would write or telegraph to the board asking it to hear and settle the case. About twelve per cent of the complaints brought directly to the board, however, were brought by employers or employers' associations. Often the employees and employer agreed jointly to submit their disputes to the board. Cases originating with employees were generally brought by the unions involved, but two hundred and ninety-six complaints came from employees in works where there were no organized unions. An effort was always made to secure joint submission if possible. Sometimes, after ordinary conciliation had failed, the Secretary of Labor requested the board to take a case.

When a case was brought to the board a preliminary inquiry was made to make sure that the nature of the case gave the board jurisdiction. The complaining party was required to file with the secretary of the board in due form a written statement of the complaints or demands. A copy of this was served on the party defendant with a request for information, and also a request that both parties submit the issue to the board and agree to abide by its decision. Field representatives were then sent out to help the parties prepare for the hearing. The procedure developed with increasing detail and completeness as the work of the board progressed. Sometimes in very important and critical situations much of the detail of procedure was dispensed with in order to secure quick action and keep production going. If jurisdiction did not exist the case would, where possible, be referred to some other body having jurisdiction, or be dismissed. Up to May 31, 1919, some three hundred and fifteen cases had been referred to other agencies for settlement, and three hundred and ninety-one dismissed. Of these dismissals one hundred and fifty-nine were for lack of prosecution by the aggrieved party, ninety-three for lack of jurisdiction, and most of the remainder as a result of voluntary settlement between the parties.

If the board had jurisdiction, one or more examiners would be sent to the place of the dispute to hold public hearings. These hearings were informal. Any evidence was admitted, subject to

common-sense restrictions as to relevancy and time. Frequently the field investigators expedited the gathering and preparation of evidence. Stenographic records of the hearings were kept and on them a summary of the case was prepared for the use of the board. For further expedition in handling cases the board was divided into sections, composed of one employer member and one employee member. The joint chairmen also acted as a section. Very important or complex cases were handled by a double section consisting of two representatives of each side. These sections would consider all the evidence, sometimes discussing the case with the examiner, or even occasionally holding additional hearings themselves on especially perplexing issues. Then they would endeavor, usually with success, to agree upon a decision in the case. If they agreed, the decision was approved by the board at its next meeting, with the right (rarely exercised) of amending the decision. If the section failed to agree, the case went to the full board for settlement. If the board could not unanimously agree as to the decision and it was a case of joint submission, the case was referred to one of the ten umpires nominated by the President. Generally the umpire was chosen by drawing lots. If, however, only one party to the case had submitted to the board, and the section could not agree a majority vote of the board was sufficient to settle its action. In such a case reference was not made to an umpire. If the board divided evenly, the case stood as undecided. Up to March 28, 1919, twenty-five cases had been referred to the umpires. Figures on this point after that date are not available. The board met every two weeks.

If the questions involved in a case were complex or the number of workers affected was large or the case of considerable importance to war production, the award frequently provided that an administrator should be sent to interpret the award, see that it was properly executed, and settle, if possible by conciliation, new questions that might arise under its operation. Where shop committees were provided in the award it was the duty of the administrator to supervise the election of their members. He also kept the board constantly informed of the progress of events in the case.

All street railway cases were decided by the joint chairmen as a section. Many of the cases they heard themselves. One examiner and two administrators devoted their entire time to that group of cases. In all there were one hundred and fifty-six of these cases.

Forty-three were dismissed after hearing or by agreement, and eighteen were referred to the Department of Labor. No less than eighty-nine awards or findings were rendered, affecting over eighty thousand street railway employees.

From the beginning of the board up to May 31, 1919, there were twelve hundred and seventy cases entered on the docket, twenty-five of which were merged with other cases, leaving twelve hundred and forty-five separate controversies. These were disposed of as follows: —

Awards and findings made	462
Dismissed	391
Referred to other agencies	315
Pending	23
Remaining in doubt because of disagreement in board	53
Suspended	1
	1,245

The fifty-three doubtful cases represented actually only three case groups, as one of the case groups involved fifty-one docket numbers. In addition to the four hundred and sixty-two awards and findings there were fifty-eight supplementary decisions, making a total of five hundred and twenty formal awards or findings. The final figures up to the dissolution of the board on August 12, 1919, have not proved available, but would vary only slightly from those given above.

The submission and disposal of cases by months up to May 31 is shown below. Complete figures are not available.

	May June July 1918	Aug.	Sept.	Oct.	Nov.	Dec.	Jan. 1919	Feb.	Mar.	Apr.	May
Cases submitted	246	125	219	151	275	68	87	73	16	5	5
Awards, findings and recommendations	34	4	10	29	41	34	65	53	132	99	19
Dismissed	35	17	34	26	18	43	135	23	16	19	—
Referred to other agencies	46	29	61	41	48	76	11	6	9	2	—

During the first three months the board was working out its own attitude toward its principles and toward the industrial situation of

the country. It was essentially a bi-partisan board, and the opposing economic forces represented in it naturally required time to adjust themselves to working together in the new relationship under war pressure. The members had to come to know one another and to realize the implications of the principles and policies to which they were committed. The date of the first decision of a case was June 12, 1918, and one other case was decided late in June. Six decisions were issued early in July, and then on July 31 decisions in twenty-six cases were announced, five of them being "industrials" and the remainder street-railway cases. In these first few months, especially, the board confined itself chiefly to cases that were most important to war production, such as the Bridgeport machinists, the Bethlehem Steel Company, the General Electric Company, the Western Union Telegraph Company, and Smith and Wesson Company. The street-car cases were mostly in munitions centers and vitally affected war production.

The increase in the number of cases submitted from August to December shows how the importance of the board's work was being felt, and the subsequent numbers of submissions strikingly reveal the effect of the armistice.

Geographically the cases were naturally situated where the war industries were most active, in the middle and northern Atlantic states and in the Middle West. There were a number of cases, however, in the South and some on the western coast. The metal trades furnished most of the cases. By crafts affected, the machinists cases were of course most frequent and involved the largest in number of men. The awards and findings directly affected ten hundred and eighty-four establishments employing over six hundred and sixty-nine thousand people. Certain crafts and industries were almost entirely excluded because they came under other governmental adjustment agencies, and the rules of the board did not give it jurisdiction in such instances. For example, coal miners came under a board in the Fuel Administration, carpenters and steel erectors under a "Cantonment Labor Adjustment Board" in the War Department, harness and saddlery workers and garment workers under other War Department boards, seamen and longshoremen under a board connected with the Shipping Board, railway workers under the Railway Administration.

Up to the signing of the armistice the power and prestige of the

board were steadily increasing, despite its early slowness in getting under way. As with all the war agencies of the government, it had to devise its machinery, secure and train its administrative personnel, and develop the implications of its policies under severe pressure. The number of cases, their character, and the board's principles, decisions, and administration of decisions, were steadily increasing its control over industrial relations throughout the country. Sanitary standards were beginning to be worked out which would have been effectively enforced through the administrative machinery. The effect of the board's work cannot be measured by the awards alone. In one hundred and thirty-eight recorded instances, and probably also many others, strikes or lockouts were averted or called off as a direct result of the board's intervention. The principles of the board were adopted by other governmental departments, such as the Ordnance Department, in the adjustment of industrial disputes in their jurisdiction. Many cases were settled without recourse to the board, in accordance with its principles or some award or the rulings of an administrator in some case. Instances of this occurred in Washington, D. C., and Philadelphia street-car disputes, wage adjustments in the Lehigh Valley region of Pennsylvania, and elsewhere.

On all these tendencies and on the board itself the signing of the armistice in November had a profound effect. Almost immediately the War Department began to notify manufacturers of cancellation or contemplated cancellation of war contracts. Manufacturers immediately took alarm, discharge of workers commenced, and the whole scene of industry became uncertain and confused. The powers of the board derived from the support of other governmental departments was greatly decreased because the policy of the President was not defined. Before the armistice there had been only two instances of actual refusal to abide by the decision of the board. The drastic settlement of those cases by the President had brought all parties into line. After the armistice, however, many employers who objected to the board's decrees in their cases asserted that the board was created only for the duration of the war and that the armistice had ended the board and the force of its decisions. They proceeded to defy the board with varying degrees of openness. The President requested the board to continue with its work, and after consideration of the situation the board issued

on Dec. 5, 1918, a statement to the effect that thereafter it would act only in cases jointly submitted to it for arbitration, and that all cases then before the board would be handled as they had been in the past. The board also announced then that —

"wherever question arises under awards already rendered as to whether those awards are still in effect on account of the term 'duration of the war,' the Secretary be instructed to advise them that those awards are in effect and that the words are interpreted to mean until peace has been proclaimed by the President of the United States."

Much of the board's prestige and power was retained and, as indicated in the foregoing figures, cases continued to be submitted for adjudication. Two of these, the New York Harbor case and the Patterson textile case, were very important both in the number of workers affected and in the character of the issues involved. In the President's cable message to the joint chairmen in regard to the New York Harbor case he stated:

"I am sure that the War and Navy departments, the Shipping Board and Railroad Administration and any other governmental agencies interested in the controversy will use all the power which they possess to make your finding effective, and I also believe that private boat owners will feel constrained by every consideration of patriotism in the present emergency to accept any recommendation which your board may make. Although the National War Labor Board, up to the signing of the armistice, was concerned solely with the prevention of a stoppage of war work and the maintenance of production of materials essential to the conduct of the war, I take this opportunity also of saying that it is my earnest hope that in the present period of industrial transition arising from the war the Board should use all means within its power to stabilize conditions and prevent industrial dislocation and warfare."

Through the spring, however, the activity and effectiveness of the board gradually declined, partly for lack of funds and partly because of apathy on the part of all parties, — the government, capital, labor, and the public. The compelling need for war production which brought the board into being and maintained it was gone. Group interests shifted to other matters. On June 25, 1919, the board adjourned subject to the wishes of the President. It recommended that its files and records be transferred to the Department of Labor, likewise any further administrative work

in connection with outstanding cases. It declined thereafter to accept any further cases. Cases then pending were to be finished by the joint chairmen or sections of the board. On August 12, 1919, the board met for the last time, and after completing action on all cases pending but one, it formally dissolved.

In order better to understand the meaning of the work of the board it will be helpful at this point to discuss briefly the leading features of some of the important cases which it handled and consider the application and working out of some of its principles.

One of the earliest cases — third on the docket — was that of the *Employees* v. *Western Union Telegraph Co.* The complaint was that the company discharged employees if they joined the telegraphers' union. The union threatened a strike if this was not discontinued. The extent of its organization was not certain, but the tying up of all the telegraph lines (for the case also involved the Postal Telegraph Company) would have seriously crippled the nation's war effort. The joint chairmen of the board, acting as mediators, proposed that the company should cease from discharging employees for joining the union, that the company recognize and deal with committees of the employees but not with the union, and that the union give up its right to strike and both sides refer all grievances to the board for settlement. The company declined this compromise and offered another, but refused to cease discharging employees because of their union affiliations. The company's compromise was unacceptable to the joint chairmen. The company refused to submit its side of the case to the board. The board could not agree on any action and simply published a statement of the various proposals and a record of their vote on the matter. The company was urged to adopt the plan proposed by the joint chairmen. It flatly refused. President Wilson publicly requested the company to conform to the plan of the joint chairmen, but without success. In the meantime, the telegraphers' union again threatened a strike, and early in July, at the President's request, Congress authorized him to take control of all the telegraph and telephone lines. This he did forthwith, and the adjustment of employees' grievances came under federal control. This case was the first one involving the issue of collective bargaining. Though the issues in the case were never satisfactorily settled, it served as the anvil upon which the board hammered out its actual working

policy in regard to the bargaining relations between employers and employees.

Another interesting early case was *Employees* v. *Frick Co., etc., of Waynesboro, Pa.*,[2] decided July 11, 1916. The board in this case took the stand that there should be a minimum wage established not in reference to the economic power of the workers to compel it, but in reference to a determinable standard of living. The workers asked, among other things, a minimum wage of thirty cents an hour, common labor receiving at that time as low as twenty-two cents an hour. The award granted a minimum of forty cents an hour and announced that the board had under consideration the determination of what should actually constitute the living wage in accordance with its principles. Skilled workers were awarded the increase they demanded. This was the first case in which an administrator was appointed. The case included eight establishments employing some three thousand workers. Shop committees were ordered to be created by the award. As such a thing had never existed or been seriously considered there before, the administrator had many problems to solve. His success in securing mutual understandings and good will among all parties was a considerable factor in the establishment of administrators as a regular part of the machinery of the board.

In the case of the *Worthington Pump & Machinery Corporation*,[3] decided July 11, 1918, the installation of the basic eight-hour day was the paramount issue. The company was manufacturing parts for submarine destroyers. As the Secretary of the Navy was most urgent that no dispute should be allowed to delay the work and favored the installation of the basic eight-hour day in all plants engaged on navy work, the board granted it in this instance. The award also established a classification and set of ratings for machinists. Later, a section of the board worked out in this case a definition of the qualification for the varying classes of machinists. This classification and set of definitions became of considerable importance subsequently, and formed the basis of administrative rulings in other cases.

The cases which firmly established the position of the board were those of the Smith and Wesson Company, making fire-arms, and the Bridgeport machinists.

[2] Docket No. 40.

[3] Docket No. 14.

In the Smith and Wesson case,[4] the board declared in its findings that the practice of making contracts between the employer and the individual employees, whereby the employee agreed not to join a union "even if such contracts were lawful when made, is contrary to the principles of the National War Labor Board and should be discontinued for the period of the war." This declaration in effect nullified the decision of the United States Supreme Court made in December, 1917, in the case of *Hitchman Coal & Coke Company* v. *Mitchell*,[5] where a union was enjoined from attempting to organize employees who had signed such contracts. The action of the board in the Smith and Wesson case was based on the idea that when representatives of the leading employers of the country agreed to the principles of the board they waived their legal rights under the Hitchman decision, just as in substance the trade union leaders had waived their right to conduct strikes. The Smith and Wesson Company, however, declined to give up its legal right in this respect, and, as it had not originally agreed to abide by the board's findings, it refused to do so. The board reported the situation to President Wilson, who promptly directed the War Department to commandeer the plant. This was done, and the board's findings were put into effect. As regards the individual contracts, this case is an interesting example of how law often lags far behind every-day practice and public opinion.

The case of the Bridgeport Machinists[6] was one of the most difficult cases in the history of the board, and probably the most important in its effect on relations between all the parties in interest. Bridgeport was one of the leading munitions centers. There the Remington Arms Company was making over nine tenths of the cartridges used by the American forces abroad. Many other companies in that city were engaged in war work. During the spring there had been friction between two companies and their employees. A special board appointed by the Government Ordnance Department adjudicated the issues, awarding a classification of machinists, among other points. The two companies refused to abide by the decision and appealed to the Secretary of War. Neither party had formally consented to abide by the award of the Ordnance Board. The machinist employees threatened a strike unless the award was enforced, whereupon the Secretary of War requested the National

[4] Docket No. 273. [5] 245 U. S. 229 (1917). [6] Docket No. 132.

War Labor Board to hear and decide the issues. The workers and employers agreed to abide by the board's decision. Practically all other companies in the city, sixty-six in all, agreed to conform to the award of the War Labor Board, bringing about sixty thousand workers under it. The other leading issue was the matter of the eight-hour day. After prolonged investigation and much consideration the board failed to agree on the points involved, and the case was then sent to one of the ten umpires. Meanwhile feeling was running high at Bridgeport. The workers were suspicious and impatient at the failure of the board to reach a prompt decision. The umpire's award granted the eight-hour day but reversed the Ordnance decision on the matter of classification. Statements and decisions by other governmental agencies had led the machinists to believe that classification was an established governmental policy. On this ground they struck, and refused to abide by the award. President Wilson thereupon wrote to the Bridgeport machinists' union that the government had commandeered the plant of the Smith and Wesson Company, because it refused to abide by an award of the War Labor Board, and "Having exercised a drastic remedy with recalcitrant employers, it is my duty to use means equally well adapted to the end with lawless and faithless employees." He requested them to return to work and abide by the award, and stated that if they refused they would, through the United States Employment Service, be barred from employment in any industry connected with the war and their industrial draft exemptions would be cancelled. He also wrote a letter to the employers insisting that all strikers should be reinstated. This action ended the strike. The board sent an administrator to Bridgeport, who stayed there for several months, supervised the election of shop committees, allayed much of the anger and suspicion, interpreted the award, supervised the payment of back pay granted under the award, and brought about vastly better understanding and good will among all parties.

The President's action in the Smith and Wesson and the Bridgeport cases greatly enhanced the prestige and power of the board among employers, employees, other governmental departments, and the general public. Thereafter its decisions were respected, and, up to the time of the armistice, obeyed, even though reluctantly in some instances.

There were three important cases involving employees of the General Electric Company at its large works in Schenectady, New York; Pittsfield, Massachusetts; and Lynn, Massachusetts. In the Pittsfield case, decided July 31,[7] the board prohibited the practice of making individual contracts as described in the Smith and Wesson case. The award provided, among other things, a method of electing shop committees in greater detail than had hitherto been specified, determined various points in regard to pay, and directed the appointment of an administrator. The same administrator supervised the situation in all three awards and worked out the shop committee system fully and satisfactorily.

The case of the Bethlehem Steel Company did not involve any peculiar principle, but was important chiefly by reason of the tremendous quantity of guns and shells being manufactured by that company. The complaint was originally made only by the machinists and electrical workers, some ten thousand in all, but the findings of the board also provided that wages and working conditions of other crafts should be adjusted by shop committees to be elected. Thus the award came to cover all the thirty thousand employees in the works. In this case the chief complaint had been about the method of pay. The question of payment of back pay later became important. The administration of this case, and the Bridgeport and the Corn Products cases, lasted longer probably than any others. The Bethlehem case, in fact, was the only case left unfinished at the time of the dissolution of the board.

The street-car cases were in many respects unique. Counsel for the American Electric Railway Association, and for the electric railway employees' union, held a series of joint conferences with the joint chairmen on the general principles involved in all this group of cases. In these conferences the employers' representatives admitted that the condition of the companies' finances was immaterial in determining the question of granting a minimum wage. It was then unofficially announced by the chairmen that in the granting of minimum wage increases the board would not consider whether or not the companies could afford to pay the increase. The payment of a living wage was made a first charge on the business. Nevertheless the joint chairmen formally requested President Wilson to take action toward permitting the street railways to

[7] Docket No. 19.

increase fares. Being public utility companies they were limited by franchise or otherwise in the amount of fare they could charge, and many of them were in serious financial conditions. As the employees in most of the railway cases were well organized and had obtained recognition by the employers, the question of collective bargaining did not often enter into the cases. The men's demands were chiefly for wage increases. The awards usually granted substantial increases. For this reason there has been an impression that the board's awards are largely responsible for the number of street railways now in the hands of receivers. But from a list of such receiverships, as of April 12, 1919, submitted to the board by one of the street railway companies, it appears that out of the fifty-nine companies then in receiverships (in twenty-seven states) only five had gone into receivers' hands after an award by the board.

In the case of *Molders* v. *Wheeling Mold and Foundry Co.*,[8] decided by an umpire, the chief question was whether the eight-hour day should be adopted. The umpire held that the eight-hour day should be adopted. He pointed out, however, in his opinion that there are emergencies likely to occur when for a brief period that limit may be exceeded. He went on to say:

"But the protection of the eight-hour day will amount to nothing if it rests with the employer alone to declare the emergency. The fifty per cent allowed for overtime is too small a penalty in view of great profits that may arise. It is true that what is 'an emergency' can be and has been defined. Still it rests with the employer to declare that the facts place the demand within the definition of an emergency."

He therefore held that, as a protection against overtime "on emergencies," nothing should be held an emergency unless so declared by majority vote of a joint board to consist of two members to be selected by the employer and two by the employees. The provision of this bit of democratic machinery is a significant step.

The case of *Employees* v. *Manufacturers of Newsprint Paper*,[9] decided June 27, 1918, is interesting because in it a majority of the manufacturers of newsprint paper voluntarily agreed to abide by the decision of the board and argued their cases as a whole. Thus the decision came to govern substantially that entire industry.

The award in the case of *Employees* v. *Corn Products Refining*

[8] Docket No. 37*b*.

[9] Docket No. 35.

Company[10] contains a very complex and interesting classification and rating of the workers in that industry, based on a prolonged, detailed study of the jobs by two of the board's examiners. The back pay granted under the award to the workers of the four factories of that company amounted in all to over $950,000. The company paid it all, and wrote to the secretary of the board that the benefits which the company had and expected to receive from the classification alone would exceed the sum expended in back pay. Another interesting feature developed in the administration of the case was an agreement between the management and the newly created shop committee of one of the plants that the management would discharge any worker recommended for discharge by the committee and would not take them back except on recommendation of the shop committee. In this plant there was after the award a brief strike by one group of workers. The management placed the responsibility of handling the situation on the shop committee. The committee responded by offering to negotiate for the group; and when the strikers refused to negotiate, the committee sustained the management and secured an entirely new set of satisfactory workers in place of the strikers.

The case of the Marine Workers Affiliation of the Port of New York,[11] was chiefly significant in relation to the board because of the fact that at the request of the President, the Railroad Administration, the Shipping Board, the Navy Department, and the War Department all submitted to the jurisdiction of the board. The private boat owners refused to submit. As this refusal occurred several months after the armistice was signed, the government did not undertake compulsory action against the private owners. The issues were wages and the eight-hour day. The technical questions of operation were highly complex, the parties defendant numerous and inharmonious, the feelings intense and bitter. The final results were probably unsatisfactory to every one.

Perhaps the chief defect of the board was its inability in a number of important instances to reach a prompt decision. This, however, was inevitable because of the bi-partisan make-up of the board and the comparative inexperience of so many of the employers of the country in collective bargaining with unions. Another

[10] Docket No. 130.

[11] Docket No. 10; Docket No. 1036.

reason for the delays came from the fact that it was exceedingly difficult to secure a clear understanding of the technique of operation in the wide variety of industries that came before the board. Without such an understanding prompt and wise decisions were very difficult to reach. The members of the board could not be experts in all industries, and it was very difficult to secure examiners or administrators who possessed good judgment, were able to grasp the technical side of the respective industries and at the same time maintain the right attitude toward the opposing parties.

Not even the warmest friends of the board would deny that it had imperfections, and some of them serious.

Nevertheless the board accomplished much real service to American industry. Its principles and investigations and decisions in regard to the minimum wage went far toward establishing that principle as an actuality in this country. The machinery of administering the awards by agents of the board proved important. Previously the labor unions, especially on the railroads, had often objected to arbitration of disputes, because the interpretation and carrying out of the award was in the sole control of the employer. This objection was therefore done away with. The administrators also served as a valuable source of technical and other information for the board, as did the examiners likewise.

But the important accomplishment of the board concerned the bargaining relationships between employers and employees, whether organized or unorganized. The great body of American employers have steadily opposed the recognition of unions and dealing with them on an equal basis, and great industrial areas have remained devoid of union organization.

At first the consensus of opinion among employers seemed to be that the boards' principles simply called for a maintenance of the *status quo* in all matters affecting unions. As interpreted in the decisions, however, it became clear that unions should be permitted to organize even in shops which heretofore had been closed non-union shops. The unions were not to strike to compel recognition in any shop where they had previously not been recognized, but the board would direct the employer to recognize and deal with shop or departmental committees which might or might not be controlled by unions. Several awards specified the method of electing such committees. In October the joint chairmen outlined a plan

of election of shop committees as a guide for administrators and others in supervising such elections.

These committees were in the awards assigned various duties, such as working out classifications, wage scales, discharges, sanitary conditions, hours, holidays, piece-work rates, establishment of an apprentice system, and matters not settled in the award.

The board held that where a shop had been unionized before the establishment of the board the shop should continue unionized.[12] Also that where an employer had recognized some unions and had not recognized others, or where some of the employers who came within an award had organized the employees in their plants into unions and other such employers had not done so, the employers should continue to negotiate with union committees to the same extent as theretofore, although they were not obliged to further organize the workers in their plants.[13]

Employers were forbidden to discriminate against workers because of membership in unions or for legitimate trade-union activities.[14] In several cases where employees had been discharged for such reasons the board ordered their reinstatement with compensation for all they had lost by reason of their discharge.[15] The board forbade the blacklisting of union men, and forbade employers to make with their employees individual contracts which deter their employees from joining unions. It held that peaceful participation in a strike should not act as a bar to re-employment. In one instance it referred to the War Department evidence that employers had missed the selective draft law in order to punish union men. The board held that it is not sufficient for the employer to countenance a "company union;" and that the employer may not compel the men to join a beneficial organization conducted by it, but the employees must be allowed to become members of any legitimate labor organization without interference on the part of the company.[16]

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[12] Gem Metal Products Corp., Docket No. 591.

[13] St. Louis Coffin Co., Docket No. 258; Philadelphia Machinists, Docket No. 400.

[14] Waynesboro Cases, Docket No. 40; N. Y. Consolidated R. R., Docket No. 283.

[15] General Electric Co., Lynn, Docket No. 231; National Car Coupler Co., Docket No. 328; Savannah Electric Co., Docket No. 748.

[16] For further interesting points and decisions see the excellent summary and digest of awards of the National War Labor Board prepared for the board by Mr. Robert P. Reeder.

Usually the board did not compel an employer to contract with a union or to deal with a representative of the employees who was not himself an employee unless the employer had been so doing before the submission of the controversy to the board.[17] But in one case where for several years the company had dealt with a business agent of the union and then ceased and refused to meet with him, he not being an employee, the umpire held that such refusal may constitute a grievance.[18]

Altogether the establishment of collective bargaining was directed, with or without shop committees, in two hundred and twenty-six cases. Shop committees were thus put into successful operation in a sufficient number of instances to give them a great impetus in all American industry. The question now will be whether unions will desire to take over and control the shop committees and whether they have sufficiently extended their strength to do so. It will also be very interesting to observe the effect of this shop-committee idea on the development of union structure. It may possibly be a factor tending to change the structure from craft to industrial form. In so far as it assisted an existing decentralizing tendency among the unions, it may affect union tactics as well as structure.

The board surely achieved its most pressing task, the stabilization and adjustment of industrial relationships in such a way as to maintain and increase the war production of the nation. Further than that, it did much to educate employers and employees and the public in regard to some of the fundamental aspects of industrial relationships. Its influence for improvement of industrial relations during the war was immense. Following its example, perhaps similar arbitration boards will be set up for certain industries, or in states or other areas. In any event, the impetus of its work will be far reaching in all American industry.

It is natural to compare the National War Labor Board with the Australian Court of Conciliation described by Mr. Justice Henry B. Higgins in his two masterly articles on "A New Province for Law and Order" published in this REVIEW.[19]

The War Labor Board was a hurried improvisation created by

[17] St. Joseph Lead Co., Docket No. 16; Commonwealth Steel Co., Docket No. 472; Dayton St. Ry. Co., Docket No. 150.

[18] Niles-Bement-Pond Co., Docket No. 339.

[19] 29 HARV. L. REV. 13, and 32 HARV. L. Rev. 189.

executive proclamation under stress of war. The Court of Conciliation was created by statute in consequence of a constitutional provision. The board lived slightly over one year, while the Court of Conciliation is now fourteen years old and Mr. Justice Higgins has presided over it for twelve years. The board was large and bipartisan; the court is made up of only one man. As a result, the Australian court has developed a consistent body of principles and has had the support and understanding of a large portion of the community. Both of these were impossible to the War Labor Board.

To help maintain production for the sake of war, by conciliation and arbitration of labor disputes, is a far different thing from so helping to maintain production for the citizen consumer. In the latter process a far sounder balance of ideas and forces and a much finer and broader conception of human group relationships is possible. This appears quite clearly in Mr. Justice Higgins' articles. The questioning of some of our fundamental industrial assumptions which one sees in his second article are characteristic results of the stress of war. Such questionings do not appear in the decisions of the War Labor Board, because it was far more devoted to maintaining rigidly the *status quo*.

Yet it seems quite possible that this questioning spirit, similarly felt in this country, is one of the reasons for the discontinuance of the War Labor Board. Aside from their apathy, the parties concerned perhaps instinctively felt that there is little use in trying to lay down law in industry while the fundamental assumptions lying behind law are being reconsidered. As Mr. Justice Oliver Wendell Holmes, in his address on Law and the Court, before the Harvard Law School Association, so finely stated: "As law embodies beliefs that have triumphed in the battle of ideas and then have translated themselves into action, while there still is doubt, while opposite convictions still keep a battle front against each other, the time for law has not come; the notion destined to prevail is not yet entitled to the field." The principles to govern a truce may be set forth under any conditions which make a truce possible, but the existence and growth of law in industry, in the sense which Mr. Justice Higgins uses the term, implies the maintenance of the *status quo* in respect to the major premises of the social order.

Whether or not the *status quo* in fundamental social and economic

relationships is to be maintained in America is an interesting subject for speculation. But in any event such considerations as the foregoing must now be taken into account in any thinking about arbitration in labor disputes, for truly, as General Smuts has said, "humanity has struck its tents and once more is on the march."

Richard B. Gregg.

NEW YORK CITY.